Petition

81-659

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NO. 81-

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1981

JOSEPH DeJAMES,

Petitioner

v.

MAGNIFICENCE CARRIERS, INC., VENTURE SHIPPING (MANAGERS LTD.), NIPPON YUSEN KAISHA, HITACHI SHIPBUILDING AND ENGINEERING COMPANY, LTD. and USUKI TEKKOSHO

HITACHI SHIPBUILDING AND ENGINEERING COMPANY, LTD.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petition For Writ Of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1) In an action brought by an injured longshoreman pursuant to the admiralty and maritime jurisdiction of the United States District Court for the District of New Jersey to recover damages for personal injuries sustained aboard ship in the Port of Camden, New Jersey, from a Japanese national corporation which previously had converted that ship in Japan to an automobile carrier designed to carry automobiles from Japan to United States ports, does the Due Process Clause of the Fifth Amendment govern the assertion of personal jurisdiction over such Japanese corporation by the District Court?

2) In determining whether the exercise of personal jurisdiction conforms with the Due Process Clause of the Fifth Amendment, should the District Court

consider a defendant's contacts with the United States as a whole, as opposed to limiting its inquiry to the defendant's contacts with the forum state?

3) If it is determined that the appropriate "contacts" in the due process inquiry are the contacts of the defendant Japanese national corporation with the forum state of New Jersey, was the conduct of such defendant in converting the vessel to an automobile carrier as a link in the chain of distribution of Japanese automobiles from Japan to United States ports, coupled with the occurrence of the injury in New Jersey, sufficient "contacts" to warrant the assertion of personal jurisdiction under this Court's decision in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)?

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OPINIONS BELOW

The Order of the United States District Court dismissing the action against respondent for lack of personal jurisdiction was affirmed by the United States Court of Appeals for the Third Circuit in an opinion dated July 9, 1981. That opinion has not yet been reported and is set forth in the appendix hereto (1A). The opinion of the United States District Court for the District of New Jersey is reported at 491 Fed. Supp. 1276. That opinion is set forth in the appendix (26A).

JURISDICTION

The Judgment of the United States Court of Appeals for the Third Circuit was entered on July 9, 1981 (60A). Thereafter, on July 23, 1981, a Petition for Rehearing was denied (62A). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation."
>
> * * *

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of the United States and of the State wherein

they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

* * *

STATEMENT OF THE CASE

Petitioner, Joseph De James, instituted this action against Respondent, Hitachi Shipbuilding and Engineering Co., Ltd., (hereinafter referred to as "Hitachi") in the United States District Court for the District of New Jersey pursuant to the Admiralty and Maritime jurisdiction of that court.[1] De-James sought damages for personal injuries

1. The action was also commenced against defendants, Magnificence Carriers, Inc., Venture Shipping (Managers, Ltd.), Nippon Yusen Kaisha, and Usuki Tekkosho. Those defendants did not participate in the proceedings before the Court of Appeals and were not affected by the Order of the District Court dismissing the action against Hitachi.

he sustained on January 26, 1977, while employed as a longshoreman aboard the M.V. "Magnificence Venture" while that vessel was berthed in the Port of Camden, New Jersey.

Hitachi is a Japanese corporation with its principal place of business in Tokoyo, Japan. It is in the business of constructing, converting, remodeling and repairing merchant vessels. Neither Hitachi, nor any of its agents or representatives, maintain an office in New Jersey.

In January and February, 1976, Hitachi converted the M.V. "Magnificence Venture" from a bulk carrier to an automobile carrier.[2] Petitioner's action against

2. Typically, a "bulk carrier" is a vessel with large open cargo holds with no intermediate deck levels. The cargo holds of an automobile carrier, on the other hand, contain several intermediate deck levels to stow the anticipated cargo of motor vehicles. Hitachi's conversion work perforce included the addition of such intermediate deck levels.

Hitachi was grounded on theories of negligence and strict liability in that Hitachi's work in converting the vessel was defective and was a proximate cause of his injuries.

Service of process on Hitachi was made in Japan pursuant to the terms of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361-67 (1969).

Following service of process, Hitachi moved to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for lack of personal jurisdiction and insufficient service of process. On June 18, 1980, the District Court issued an Order granting the motion to dismiss (64A). Although the complaint was not dismissed against all defendants, the District Court concluded there was no just reason for delay and entered final judgment for Hitachi pursuant to Rule 54(b) of the Federal Rules of Civil Procedure (66A).

In granting Hitachi's motion to dismiss, the District Court held that since jurisdiction was based on the admiralty jurisdiction of the District Court, questions of personal jurisdiction were governed by the Due Process Clause of the Fifth Amendment (29A). The District Court concluded, however, that Hitachi's contacts with the United States as a whole were not pertinent to a due process analysis since service of process had not been made through "wholly federal means" (57A). It then held that Hitachi's contacts with the State of New Jersey were insufficient to warrant assertion of personal jurisdiction (41A).

The Court of Appeals affirmed the order dismissing the complaint, Judge Gibbons dissenting. The opinion of the majority first noted that "Because this suit arises under the District Court's admiralty jurisdiction, the due process clause of the Fifth Amendment determines whether the district court has

personal jurisdiction over Hitachi (4A). Nonetheless, the majority went on to conclude that ". . . we believe that Hitachi's amenability to suit in the District of New Jersey is limited by the due process constraints of the Fourteenth Amendment." (5A)

Utilizing the due process analysis of the Fourteenth Amendment, the Court of Appeals held that Hitachi's contacts with the State of New Jersey were not sufficient to warrant the assertion of personal jurisdiction since the conversion work performed by Hitachi did not constitute the type of conduct sufficient to put Hitachi on notice that it might be called upon to defend itself in New Jersey (9A-10A).

The Court of Appeals further held that the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361-367 (1969), did not effect a "wholly

federal means of service" which would warrant an examination of Hitachi's contacts with the United States as a means of ascertaining whether due process requirements had been satisfied (17A).

The dissenting opinion filed by Judge Gibbons took issue with the majority in two respects[3] - 1) its holding that Hitachi had no "reasonable expectation of being haled before a court" in New Jersey based on this Court's opinion in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) and 2) its application of fourteenth amendment principles in resolving the question of "amenability to suit on a federal claim."

3. Judge Gibbons agreed with the majority's conclusion "that the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361-367 (1969), does not afford a 'wholly federal' means of service of process on a foreign national corporation." (18A)

Judge Gibbons urged that the majority had improperly analogized Hitachi to the local dealers involved in World-Wide Volkswagen (19A). His analysis of Hitachi's status was that of a manufacturer whose product (automobile carrying vessels) serves as a vital link in the chain of distribution of another product (automobiles) under circumstances where the sale of the second product directly promotes production and sales of the first product. Judge Gibbons posited that such a manufacturer should be subject to personal jurisdiction in the state where his product causes harm - even if the product "arrived in the forum through the activities of a manufacturer or distributor further down the chain of production or sale." (20A-22A)

In the second phase of his dissent, Judge Gibbons noted that whether a state or federal court adjudicates a federal claim, the "applicable due process provision" is that

of the Fifth Amendment (22A). Fifth Amendment considerations, he observed, involve an examination of "national" contacts as opposed to contacts solely within the forum state (23A). Moreover, Judge Gibbons reasoned that even if service was made pursuant to the New Jersey Long-Arm Statute,[4] the relevant due process standard remains the Fifth Amendment - particularly when, as here, the state long arm statute permits the assertion of personal jurisdiction to the limits of "the relevant due process clause." (23A-24A)

Following the issuance of the Court of Appeals' decision, petitioner moved for a Rehearing In Banc. On July 23, 1981, the Court of Appeals denied that petition (62A-63A). However, two circuit judges in regular active service indicated they would grant the petition, while two others, including Judge Gibbons, dissented from the denial of rehearing.

4. R. 4:4-4, N.J. Court Rules.

There were 9 "regular active" circuit judges on the Third Circuit panel at the time the Petition for Rehearing in this matter was denied. Had a majority of such judges voted for rehearing, it would have been granted. It thus appears that petitioner fell one vote short of being granted a rehearing.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT - NAMELY, THE APPLICABILITY AND INTERPRETATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT IN GOVERNING ASSERTION OF PERSONAL JURISDICTION OVER A FOREIGN NATIONAL CORPORATION IN AN ACTION BROUGHT PURSUANT TO THE ADMIRALTY AND MARITIME JURISDICTION OF THE DISTRICT COURT WHERE SERVICE IS EFFECTED THROUGH A STATE LONG-ARM STATUTE.

This action was instituted in the U.S. District Court for the District of New Jersey pursuant to the admiralty and maritime jurisdiction of the District Court. 28 U.S.C.

§1333. The accident underlying this action had occurred in New Jersey, the plaintiff was a resident thereof, and the witnesses in the case were readily available in Camden, New Jersey, the site of the courthouse. Since Hitachi was a Japanese national corporation with no representatives available for service in the State of New Jersey, service was made on Hitachi in Japan pursuant to the terms of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commerical Matters, 20 U.S.T. 361-367 (1969).

The Court of Appeals held that service pursuant to the Convention did not effect a "wholly federal" means of service and merely implemented the method of service under the New Jersey long arm statute. R. 4:4-4, N.J. Rules of Court. Concluding that New Jersey's long-arm statute was "limited by the due process constraints of the Fourteenth Amendment," the Court of

Appeals' due process analysis hinged on fourteenth amendment, and not fifth amendment, standards. This resulted in focusing on Hitachi's contacts with the forum state as opposed to its national contacts with the United States.

This case thus presents the question of what due process standards should be applied in determining personal jurisdiction over a foreign defendant in a case involving adjudication of a federal claim where service is made pursuant to a state long-arm statute. This is an important question involving the interplay of federal and state interests which has not yet been considered by this Court. It is a question which will come into play more and more as the world "shrinks" and products shipped from abroad find their way into the United States.

It is no longer uncommon for products manufactured abroad to be shipped

to and distributed in this country pursuant to a chain of international commerce.[5] It is readily foreseeable that product liability litigation will continue to expand as U.S. residents are injured by defects in such products. Such injuries may often occur in states where representatives of the foreign manufacturer or shipper are not available for service of process. In most of these cases, service will be effected through the forum state's long-arm statute under Rule 4(e) of the Federal Rules of Civil Procedure.[6] It is respectfully submitted

5. A striking example of the flood of products into this country from abroad can be found in figures cited in Judge Gibbons' opinion relating to the shipment of Japanese automobiles into the Port of New York-New Jersey each year (20A-21A).

6. Rule 4(e) provides:

> "(e) Same: Service Upon Party Not Inhabitant of or Found Within State. Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon

(footnote continued next page)

that this Court should address itself to the question presented herein in order to afford proper guidance to lower federal and state courts that will be grappling with this problem.

(footnote 6 continued)

> a party not inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if, there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

Many courts have concluded that when a state long-arm statute is utilized to effect service of process in a case involving a federal claim, exercise of personal jurisdiction is limited by the constraints of the due process clause of the Fourteenth Amendment, thus limiting the jurisdiction of a federal court in a federal question case by the law of the forum state.[7] This anomaly was noted by the Third Circuit in Hartley v. Sioux City and New Orleans Barge Lines, Inc., 379 F.2d 354, 356, n.2 (3 Cir. 1967), as follows:

> "We note the anomaly presented when a federal court, deciding a federal question, looks to the State statutory procedure under Rule 4(d) (7). The jurisdiction of the federal court in deciding a federal question must vary from State to State. Uniformity of decisions must be dispensed with to some degree. Federal Courts therefore are necessarily dependent on the liberality or

7. See cases cited in the opinion of the District Court herein (47A).

> conservatism of the laws or rules of court of the State in which they sit. Thus, a plaintiff asserting a federal cause of action may be denied his day in a federal court because of the failure of the State in which the court sits to have exercised the power permissible to it under the Federal Constitution to enact laws or rules of court in aid of service. We need not resolve this anomaly in the cases at bar."

It is respectfully submitted that the approach suggested by Judge Gibbons in his dissent resolves this anomaly in a way which accomodates the interface between the state and federal judiciary.

The New Jersey Long-Arm Statute permits service on non-resident defendants "to the uttermost limits permitted by the United States Constitution." Avdel Corporation v. Moore, 58 N.J. 264, 268 (1971). Thus, R. 4:4-4(c)(1), N.J. Court Rules, provides in pertinent part:

> "If it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts that after diligent inquiry

> and effort personal service can not be made upon any of the foregoing and if the corporation is a foreign corporation, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office." (Emphasis Supplied)

The Rule cited above does not state "consistent with the due process clause of the Fourteenth Amendment." Instead, it utilizes the phrase "consistent with due process." As noted by Judge Gibbons:

> ". . . [A] state long-arm implements neither the fourteenth nor the fifth amendment. A state's authority to promulgate rules of competence derives from a state's sovereign power to adjudicate state law and federal question cases, and indeed to rule on controversies arising under a foreign nation's law. This power is preserved to the states through the tenth amendment, although it may be limited by congressional provision for exclusive federal court subject matter jurisdiction. The fifth amendment simply defines the boundaries within which a state

> may adopt a rule of competence to assert personal jurisdiction in federal question cases." (Footnote omitted) (24A)

The applicable standard of fairness in applying the due process clause of the Fifth Amendment to the assertion of personal jurisdiction was described by Judge Gibbons as follows:

> "The fifth amendment requires only that the forum be a fair and reasonable place at which to compel defendant's appearance, and that he have had notice and a reasonable opportunity to be heard . . . A defendant's national contacts enter into the fifth amendment fairness analysis, for it would be unreasonable to subject to suit in the United States a foreign national defendant who had but one fleeting connection with this country. But it is not necessary, under the fifth amendment due process clause, that the defendant's contacts relate primarily to the particular United States location in which the claim arose." (22A-23A)

This Court has not yet considered the application of the Fifth Amendment due process standard in the context of exercising personal jurisdiction in a

federal claim. However, there has been a considerable split of authority in the lower federal courts on this question. Only one Court of Appeals decision has squarely rejected the Fifth Amendment - "national contacts" standard in a case arising under a federal claim. Wells Fargo & Co. v. Wells Fargo Exp. Co., 556 F.2d 406 (9 Cir. 1977) (Lanham Act). There, the Court did not question the reasonableness in a federal claim of aggravating an alien's contacts with the United States as a whole in determining personal jurisdiction. It concluded, however, that the Federal Rules of Civil Procedure should be amended "to authorize such a practice." 556 F.2d at page 418.

At least two Circuits have expressly declined to rule on the national contacts formulation. See Honeywell, Inc. v. Metz Apparatewerke, 509 F.2d 1137, 1143 (7 Cir. 1975) (Patent Act) and Koupetoris v. Konkar

Intrepid Corp., 535 F.2d 1392, 1395 (2 Cir. 1976) (Jones Act and General Maritime Law). In both cases, the Courts found it unnecessary to reach the Fifth Amendment - national contacts question since there were sufficient contacts with the forum state to warrant the assertion of personal jurisdiction.

Recently, however, the Second Circuit affirmed, without opinion, a decision of a district court applying a national contacts formulation in an admiralty case. Fosen v. United Technologies Corp., 484 F.Supp. 490 (S.D. N.Y. 1980), aff'd 633 F.2d 203 (2 Cir. 1980). However, since the district court held that the defendant in that case had insufficient contacts with the United States to warrant the assertion of personal jurisdiction, the affirmance without opinion leaves the question presented here still open in the Second Circuit.

District court decisions have been far from uniform on this question. In Holt v. Klosters Rederi A/S, 355 F.Supp. 354, 356-57 (W.D. Mich. 1973), the Court expressly adopted the Fifth Amendment national contacts approach in an admiralty case. See also First Flight Co. v. National Carloading Corp., 209 F.Supp. 730 (E.D. Tenn. 1962); Edward J. Moriarity & Co. v. General Tire & Rubber Co., 289 F.Supp. 381 (S.D. Ohio 1967); Cryomedics, Inc. v. Spemly, Ltd., 397 F.Supp. 287 (D. Conn. 1975) and Centronics Data Computer Corp. v. Mannesmann, 432 F.Supp. 659 (D.N.H. 1977).

Cases rejecting this approach include Superior Coal Co. v. Ruhrkuhle, A.G., 83 F.R.D. 414 (E.D. Pa. 1979); Harem-Christensen Corp. v. M.S. Frigo Harmony, 477 F.Supp. 694 (S.D. N.Y. 1979), and Auburn v. Harold Forster Indus. Ltd., 423 F.Supp. 1302 (E.D. Mich. 1976).

The importance of this question and the need to provide guidance to the lower federal courts strongly support the granting of certiorari in this case.

II. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE DECISION OF THIS COURT IN WORLD-WIDE VOLKSWAGEN CORP. V. WOODSON, 444 U.S. 286 (1980).

In World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), this Court was first called upon to consider the application of due process standards to the exercise of personal jurisdiction in a product liability personal injury context. There, an action was brought in Oklahoma on behalf of several New York residents who were seriously injured when an automobile they had purchased in New York burst into flames while they were passing through Oklahoma.

Suit was brought against several parties including the vehicle's manufacturer, importer, regional distributor and retail dealer. The case reached this Court on the sole question of whether Oklahoma's exercise of jurisdiction over the regional distributor

and retail dealer - both located in New York - violated the Due Process Clause of the Fourteenth Amendment. The propriety of exercising jurisdiction over the manufacturer and importer was not directly before the Court for consideration.

Although this Court held that due process requirements would be violated by the exercise of personal jurisdiction over the local retail dealer and distributor, it noted the distinction between a local dealer and a manufacturer of a product causing harm at pages 297-98 as follows:

> ". . .[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its power

> under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Compare Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432 176 NE2d 761 (1961)." (Emphasis Supplied)

In the case at bar, the majority opinion of the Court of Appeals likened Hitachi to the local dealer in World-Wide Volkswagen instead of to the manufacturer and held that Hitachi had no "reasonable expectation of being haled before a court in New Jersey.[8]

8. In World-Wide Volkswagen, this Court explained:

> ". . .[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there."

Judge Gibbons' dissent strongly criticized this analogy. His opinion concludes (21A-22A):

> "I perceive no valid distinction between a manufacturer whose product serves as a link in the chain of production of another product, and one whose product forms an essential link in the chain of distribution of another product at least when sale of the second product directly promotes production and sale of the first product. Thus, I would hold that assertion of personal jurisdirection in New Jersey over Hitachi is consistent with World-Wide Volkswagen."

The expansion of the field of product liability coupled with the influx of products made abroad into the United States continues to present difficult questions for the lower federal courts regarding the standards to be applied in exercising personal jurisdiction over a foreign manufacturer. We respectfully submit that the Third Circuit did not properly apply the direction set forth by this Court in World-Wide Volkswagen. We also

respectfully submit that the lower courts require additional direction from this Court on this important area of Constitutional law.

Finally, it should be emphasized that the decision below emanates from a closely divided court. Only the vote of one additional circuit judge in regular active service would have been sufficient to grant a rehearing before the Court of Appeals. Clearly, close and significant questions of Constitutional law are presented by this case which require resolution by this Court.

CONCLUSION

For all the foregoing reasons, it is respectfully requested that a Writ of Certiorari issue to review and reverse the decision below.

Respectfully submitted,

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Appendix

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ALEXANDER

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Respondent.

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Appendix To The Petition For Writ Of Certiorari

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APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 80-2209

JOSEPH DeJAMES,

Appellant

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MAGNIFICENCE CARRIERS, INC., VENTURE SHIPPING (MANAGERS LTD.), NIPPON YUSEN KAISHA, HITACHI SHIPBUILDING AND ENGINEERING COMPANY, LTD., and USUKI TEKKOSHO

HITACHI SHIPBUILDING AND ENGINEERING COMPANY, LTD.,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(D.C. Civil No. 78-02892)

Argued March 19, 1981

Before: SEITZ, *Chief Judge*, VAN DUSEN and GIBBONS, *Circuit Judges*

(Filed July 9, 1981)

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OPINION OF THE COURT

SEITZ, *Chief Judge*.

Joseph DeJames appeals from an order of the district court dismissing his admiralty claim against Hitachi Shipbuilding and Engineering Co., Ltd. (Hitachi) for lack of personal jurisdiction and insufficient service of process. Although the complaint was not dismissed as to all defendants, the district court determined that there was no just reason for delay and entered final judgment for Hitachi pursuant to rule 54(b) of the Federal Rules of Civil Procedure. The district court had admiralty jurisdiction pursuant to 28 U.S.C. §1333 (1976). This court has jurisdiction under 28 U.S.C. §1291 (1976).

I.

DeJames, a New Jersey longshoreman, was injured while working on the M.V. Magnificence Venture (the vessel) when it was moored to a pier in Camden, New Jersey. DeJames filed a complaint in the United States

District Court for the District of New Jersey, alleging negligence and strict liability in tort against, *inter alia*, the charterers of the vessel and Hitachi, a Japanese corporation with its principal place of business in Japan. Hitachi had converted the vessel in Japan from a bulk carrier to an automobile carrier. DeJames alleged that Hitachi's conversion work was defective.

After the complaint was filed, process was served on Hitachi at its place of business in Japan by the Japanese Minister of Foreign Affairs apparently in accordance with the requirements of an international treaty. *See Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, 20 U.S.T. 361-367 (1969). Hitachi filed a motion to dismiss for lack of personal jurisdiction pursuant to rule 12(b)(2) of the Federal Rules of Civil Procedure. In support of this motion, Hitachi submitted an affidavit from Kiyoshi Ohno, the manager of its ship repair business department in Tokyo, Japan. According to this affidavit, Hitachi completed all work on the vessel at its Japanese shipyard and had no further contact with the vessel after it left Osaka, Japan. The affidavit also states that Hitachi does not maintain an office, have an agent of any type, or transact any business in New Jersey.

After completion of discovery, briefing, and oral argument on the question of jurisdiction, the district court dismissed the complaint against Hitachi. The district court held that there were insufficient contacts with the state of New Jersey to support in personam jurisdiction. *See DeJames v. Magnificence Carriers, Inc.*, 491 F. Supp. 1276, 1279-81 (D.N.J. 1980). The court then considered whether it would be appropriate to aggregate all of Hitachi's contacts with the United States for the purpose of establishing personal jurisdiction. The district court believed that a defendant's national contacts might be a viable basis for jurisdiction where service could be effected through wholly federal means. *See id.* at 1284.

However, because Congress has not authorized nationwide service of process for admiralty actions, and because it was necessary for DeJames to utilize New Jersey's long-arm rule, the court concluded that the jurisdictional inquiry was limited to the question whether Hitachi's contacts with New Jersey were sufficient to confer personal jurisdiction. *See id.*

On appeal, DeJames makes two arguments for reversing the district court. First, he argues that Hitachi's contacts with the state of New Jersey are sufficient to support personal jurisdiction. Alternatively, he argues for the first time on appeal that service was made by wholly federal means, and thus that the district court erred in not considering Hitachi's national contacts.

II.

Because this suit arises under the district court's admiralty jurisdiction, the due process clause of the fifth amendment determines whether the district court has personal jurisdiction over Hitachi. *See Fraley v. Chesapeake & Ohio Railway*, 397 F.2d 1, 4 (3d Cir. 1968). However, the principle announced in diversity cases such as *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny is also applicable to nondiversity cases. *See Fraley*, 397 F.2d at 3. This standard provides that a defendant is subject to a forum's jurisdiction only if its contacts with the forum are such that maintenance of the suit will not offend traditional notions of fair play and substantial justice. It is unclear whether the *Fraley* court meant that the fifth amendment requires a defendant to have minimum contacts with the forum state, or whether the court intended only that the *International Shoe* test be applied by analogy, so that a defendant need only have minimum contacts with the United States as a whole. In any event, even in nondiversity cases, if service of process must be made pursuant to a state long-arm statute or rule of court, the

defendant's amenability to suit in federal district court is limited by that statute or rule. *See Hartley v. Sioux City & New Orleans Barge Lines, Inc.*, 379 F.2d 354, 357 (3d Cir. 1967).

With these principles in mind, we will examine DeJames' arguments that the district court erred in dismissing his claim against Hitachi for lack of personal jurisdiction. In the district court, DeJames claimed that service had been made pursuant to New Jersey Court Rule 4:4-4. Although he now claims alternatively that service was made by wholly federal means, we address first his argument that Hitachi's contacts with the state of New Jersey alone are sufficient to support personal jurisdiction under that state's long-arm rule.

A.

The New Jersey long-arm rule is intended to extend as far as is constitutionally permissible. In enacting its long-arm rule, the state of New Jersey is limited by the due process constraints of the fourteenth amendment. Therefore, we believe that Hitachi's amenability to suit in the District of New Jersey must be judged by fourteenth amendment standards. We recognize that this creates an anomalous situation because it results in a federal court in a nondiversity case being limited by the due process restrictions imposed on the states by the fourteenth amendment as opposed to those imposed on the federal government by the fifth amendment. However, it would be equally anomalous to utilize a state long-arm rule to authorize service of process on a defendant in a manner that the state body enacting the rule could not constitutionally authorize. The anomaly of a federal court being limited by the requirements of the fourteenth amendment in a nondiversity case where service must be made pursuant to a state long-arm rule could be easily rectified by congressional authorization of nationwide service of process for admiralty cases. It is not within our province to create such authorization.

DeJames directs our attention to only one contact that Hitachi has had with the state of New Jersey: the vessel on which Hitachi had done conversion work was docked in Camden, New Jersey when DeJames was injured.[1] DeJames argues that this contact is sufficient to support the exercise of in personam jurisdiction over Hitachi.

The evolution of the due process standards that guide courts in determining whether a defendant is amenable to suit in a particular forum has been detailed on numerous occasions and need not be repeated at length here. The primary consideration in the jurisdictional inquiry is that of fundamental fairness to the defendant. The Supreme Court held in *International Shoe*:

> [D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). *In Hanson v. Denckla*, 357 U.S. 235, 253 (1958), the Supreme Court further refined its due process analysis by stating that "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Recently, in *Shaffer v. Heitner*, 433 U.S. 186 (1977), *Kulko v. Superior Court*, 426 U.S. 84 (1978), and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the Supreme Court in-

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1. In his appellate brief, DeJames refers to contacts that a subsidiary of Hitachi has with the state of New Jersey. However, counsel for DeJames expressly abandoned reliance on the subsidiary's contacts at oral argument before the district court, and we will not consider them on appeal.

dicated that due process requires that the defendant have a reasonable expectation that the nature of its conduct is such that it may be "haled before a court" in the forum state. Standing alone, the fact that the defendant could foresee that its conduct might affect the forum state, or that its product might find its way to the forum state, is too attenuated to constitute such a "reasonable expectation." *See World-Wide Volkswagen*, 444 U.S. at 297.

DeJames argues that the conversion work done by Hitachi on the vessel in effect makes Hitachi the "manufacturer" of the vessel, and thus distinguishes Hitachi from the local retailer and the regional distributor in *World-Wide Volkswagen*. Because Hitachi "manufactured" a ship capable of transporting automobiles, DeJames asserts that Hitachi should be amenable to process in any port where the ship docks and injury occurs as a result of Hitachi's allegedly defective work.

In making this argument, DeJames places substantial reliance on the numerous cases adopting the "stream-of-commerce" theory as a basis for jurisdiction over a foreign manufacturer. *See, e.g., Stabilisierungsfords Fur Wein v. Kaiser Stuhl Wine Distributors Pty. Ltd.*, No. 79-1392 (D.C. Cir. March 23, 1981); *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir. 1969).[2] We believe this reliance is misplaced.

The stream-of-commerce theory developed as a means of sustaining jurisdiction in products liability cases in which the product had traveled through an extensive chain of distribution before reaching the ulti-

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2. For a more detailed discussion of the stream-of-commerce theory, and a more extensive compilation of cases using this theory, see Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 Ill. L.F. 533; Note, *The Long-Arm Reach of the Courts After Kulko v. Superior Court*, 65 Va. L. Rev. 175 (1979).

mate consumer. Under this theory, a manufacturer may be held amenable to process in a forum in which its products are sold, even if the products were sold indirectly through importers or distributors with independent sales and marketing schemes. Courts have found the assumption of jurisdiction in these cases to be consistent with the due process requirements identified above: by increasing the distribution of its products through indirect sales within the forum, a manufacturer benefits legally from the protection provided by the laws of the forum state for its products, as well as economically from indirect sales to forum residents. Underlying the assumption of jurisdiction in these cases is the belief that the fairness requirements of due process do not extend so far as to permit a manufacturer to insulate itself from the reach of the forum state's long-arm rule by using an intermediary or by professing ignorance of the ultimate destination of its products. *See Note, supra* note 2, at 179, 189.

In contrast to the manufacturers in the stream-of-commerce cases, Hitachi did not utilize the owners of the vessel it "manufactured" as distributors of its product and thus did not take advantage of an indirect marketing scheme. Moreover, Hitachi received no economic benefit, either direct or indirect, from residents of New Jersey. Although it could be argued that Hitachi receives some derivative benefit from the international market for Japanese cars and from the fact that the charterers of the vessel were permitted to unload cars in New Jersey, we believe that this attenuated benefit is insufficient to support the assertion of personal jurisdiction. The only benefit that Hitachi derives from the ability of the vessel to dock in New Jersey and the international market for Japanese cars transported on the vessel is that Hitachi may do more conversion of large vessels into automobile carriers, as opposed to work on smaller ships or other kinds of ship repair. This derivative benefit is similar to the benefit that the local retailer

and the regional distributor in *World-Wide Volkswagen* derived from the fact that the cars they sold could freely travel across state lines and stop within the forum state. The ability of the consumer to drive the car sold by the *World-Wide Volkswagen* defendants into the forum state, like the ability of the charterers of the vessel to sail the ship "manufactured" by Hitachi into the forum state, arguably increases the demand for the services performed by the defendants. However, this derivative benefit was found insufficient to support personal jurisdiction over the defendants in *World-Wide Volkswagen*, and we likewise find it insufficient to support personal jurisdiction over Hitachi in New Jersey.

We recognize that a single contact between the defendant and the forum state may be sufficient to support the assertion of personal jurisdiction over the defendant in a suit arising from this contact. *See McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957). However, we believe that initially we must focus on the defendant's conduct to determine whether the nature of this conduct can be said to have put the defendant on notice that it may be called to defend its actions in the forum state. We do not believe that the conversion work performed by Hitachi in Japan constitutes this kind of conduct. It is true that Hitachi could have foreseen that a ship of this size was capable of transporting cars to any port in the world. However, the Supreme Court put to rest the notion in *World-Wide Volkswagen* that this kind of foreseeability alone is a sufficient basis for personal jurisdiction under the due process clause. *See World-Wide Volkswagen*, 444 U.S. at 295-97. If it were sufficient, the Supreme Court noted, "[e]very seller of chattels would in effect appoint the chattel his agent for service of process. His amenability would travel with the chattel." *Id.* at 296. The Supreme Court found this result unacceptable. Were we to accept DeJames' foreseeability argument in this case, Hitachi would be amenable to suit in every forum where a ship on which it

had done conversion work, and over which it exercised no control, could be found.

The conversion work done by Hitachi was performed exclusively in Japan and had no connection with the state of New Jersey. Even accepting DeJames' characterization of Hitachi as the "manufacturer" of the vessel, Hitachi sold its product to the ultimate "consumer" when it returned the converted vessel to its owners in Japan. The fortuitous circumstance that the owners chose to dock in New Jersey is insufficient to support the assertion of jurisdiction over Hitachi under the New Jersey long-arm rule.

B.

Having affirmed the conclusion of the district court that Hitachi's contact with the state of New Jersey was insufficient to support the assertion of personal jurisdiction over Hitachi, we now address DeJames' argument that the district court erred in refusing to aggregate Hitachi's contacts with the United States as a whole. On appeal, DeJames does not quarrel with the conclusion of the district court that when Congress has not authorized nationwide service of process, a federal district court's power to require a defendant to submit to its jurisdiction is limited by the Federal Rules of Civil Procedure, and through them by the long-arm rule of the state in which it sits. As we noted above, we believe the district court was correct in reaching this conclusion. DeJames now contends, for the first time on appeal, that process was served in accordance with the *Convention on the Service Abroad of Judicial & Extrajudicial Documents in Civil and Commercial Matters*, 20 U.S.T. 361 (1969). He argues that the international treaty, combined with rule 4(d)(3) of the Federal Rules of Civil Procedure, effects a "wholly federal means" of service, and that the district court should have aggregated all of Hitachi's contacts

with the United States to support the assertion of jurisdiction.[3]

Counsel for DeJames has not presented us with a valid reason why the district court was not apprised of the fact that service was made in compliance with this treaty. However, the national-contacts theory was presented to the district court, and Hitachi does not dispute that process was served in accordance with the terms of the treaty.[4] Moreover, Hitachi addresses this issue in its appellate brief and does not appear to object to DeJames' failure to bring the treaty to the district court's attention. Therefore, we will address DeJames' new assertion that there was a wholly federal means available, with which he actually complied.

We cannot accept DeJames' argument that rule 4(d)(3) provides the requisite federal authority to utilize the methods of serving process contained in the treaty.

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3. We will accept for purposes of this appeal DeJames' position that if service can be made by wholly federal means all of Hitachi's contacts with the United States may be aggregated to support jurisdiction in the District of New Jersey, even if these contacts are limited exclusively to Hawaii, to Alaska, or to a few states on the west coast. As we noted earlier, the *Fraley* court stated that the fourteenth amendment standards of due process announced in *International Shoe* and its progeny also apply to cases grounded on a federal claim, which is governed by fifth amendment standards. *See* 397 F.2d at 3. Even if this statement is not read to limit the jurisdictional inquiry to contacts with the forum state, we are not sure that some geographic limit short of the entire United States might not be incorporated into the "fairness" component of the fifth amendment. For a discussion of possible fifth amendment limitations, see *Oxford First Corp. v. PNC Liquidating Corp.*, 372 F. Supp. 191, 198-204 (E.D. Pa. 1974).

4. In addition, even if the state procedures were utilized, the limitations that accompany service under a state long-arm rule do not apply if a wholly federal means of effecting service of process is available. *See Hartley v. Sioux City & New Orleans Barge Lines, Inc.*, 379 F.2d 354, 356 (3d Cir. 1967).

Rule 4(d)(3) allows personal service to be made "by delivering a copy of the summons to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process," when such officer or agent is an inhabitant of, or can be found within, the forum state. *See, e.g., Bernardi Bros. v. Pride Manufacturing, Inc.*, 427 F.2d 297, 298 (3d Cir. 1970). In this case, no officer or agent of Hitachi was served in New Jersey. Even if we accept DeJames' argument that the Japanese Minister of Foreign Affairs was authorized by law to receive service on Hitachi, the Minister of Foreign Affairs received the request for service on Hitachi in Japan. The only entity within New Jersey that handled a copy of the complaint was the United States Marshal's office in Camden, New Jersey. The Marshal's office is not authorized to receive service on Hitachi in New Jersey. Under the terms of the treaty, the United States Marshal's office merely transmits a request for service to the Japanese Minister of Foreign Affairs in Japan. The Minister of Foreign Affairs then serves a copy on the defendant in Japan. Because no service was effected within the territorial limits of New Jersey, DeJames' reliance on rule 4(d)(3) is misplaced.

Having rejected DeJames' claim that rule 4(d)(3) authorizes service of process on a foreign defendant outside the United States, we do not believe that service on Hitachi in accordance with the treaty constitutes service by "wholly federal means." We base this conclusion on the nature and purpose of the treaty, its applicability to state-court litigation, and its intended interaction with the Federal Rules of Civil Procedure.

The treaty was intended to further international judicial cooperation among nations for the increasing number of cases both here and abroad that had international overtones. Numerous problems had surfaced in connection with international judicial assistance, primarily due to the inconsistent procedural requirements im-

posed by different nations. American plaintiffs sometimes found it difficult, or prohibitively expensive, to effect service in a manner that complied both with the federal or state statute authorizing such service and the requirements of the country in which the defendant was served. *See, e.g.*, Jones, *International Judicial Assistance: Chaos and a Program for Reform*, 62 Yale L.J. 515, 534-538 (1953); Miller, *International Cooperation in Litigation Between the United States and Switzerland: Unilateral Procedural Accommodation in a Test Tube*, 49 Minn. L. Rev. 1069, 1075-1086 (1965). Foreign plaintiffs who wished to serve American defendants in the United States often encountered difficulties because there was no central authority to assist them, and local officials who were authorized to effect service were often unfamiliar with the procedural requirements of the civil-law countries. *See* Note, *The Effect of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, 2 Cornell Int'l L.J. 125 (1969). Moreover, certain civil-law countries authorized methods of service that failed to give notice to the American defendant, thereby creating the risk that an American defendant would suffer a default judgment in that country without having had an opportunity to defend the claim. *See, e.g., Report of the Senate Committee on Foreign Relations on the Convention on the Service Abroad of Judicial and Extrajudicial Documents*, S. Exec. Rep. No. 6, 90th Cong., 1st Sess. 11-12 (April 12, 1967) (Statement of Philip W. Amram) [hereinafter cited as *Senate Executive Report*].

In order to alleviate the problems mentioned above, the United States entered into a multilateral treaty. This treaty provides for methods of serving judicial and extrajudicial documents that the signatories to the treaty have agreed to honor. It provides that each signatory shall designate a Central Authority to process requests for service, but it also allows service to be effected with-

out utilizing the Central Authority as long as the nation receiving service has not objected to the method used. Thus, the more liberal methods provided in the Federal Rules of Civil Procedure and state long-arm rules may be used as long as the nation receiving service has not objected to them. *See, e.g., Shoei Kako Co. v. Superior Court*, 33 Cal. App. 3d 808, 109 Cal. Rptr. 402 (1973); *Senate Executive Report* at 13 (Statement of Philip W. Amram).

The purpose of the treaty is set forth at its beginning:

> The States signatory to the present Convention.
>
> Desiring to create appropriate *means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time.*
>
> Desiring to improve the organization of mutual judicial assistance for that purpose *by simplifying and expediting the procedure.*
>
> Have resolved to conclude a Convention to this effect and have agreed upon the following provisions.

20 U.S.T. at 362 (emphasis added). We believe that the purpose and nature of the treaty demonstrates that it does not provide independent authorization for service of process in a foreign country. The treaty merely provides a mechanism by which a plaintiff authorized to serve process under the laws of its country can effect service that will give appropriate notice to the party being served and will not be objectionable to the country in which that party is served.

We find further support for this conclusion in the fact that the treaty applies to parties desiring to make service in state-court proceedings. The nature of the judicial system of the United States, which includes not only the federal courts but also the many state systems with their differing procedural requirements, was one of

the primary justifications for entering into a treaty that would provide a uniform, valid method of effecting service. In supporting the statute that authorized the establishment of the Commission on International Rules of Judicial Procedure, Lloyd Wright, then President of the American Bar Association, observed:

> With 49 separate procedural jurisdictions in the United States . . . a unitary approach is the only solution. We can hardly expect [a foreign government] to look favorably on a program of separate negotiation with the representatives of each of the 48 states and with the representatives of the Federal Government. The problems must be solved through a single, unified set of discussions, the results of which will be effective for all of the 49 jurisdictions.

Commission on International Rules of Judicial Procedure — Establishment, S. Rep. No. 2392, 85th Cong., 2d Sess. (1958), *reprinted in* 1958 U.S. Code Cong. & Admin. News 5201, 5206.

By virtue of the supremacy clause, the treaty overrides state methods of serving process abroad that are objectionable to the nation in which the process is served. However, we do not believe that the treaty in any way affects a state's chosen limits on the jurisdictional reach of its courts.[5] If a state long-arm rule does not authorize service outside the United States, a litigant in that state would have no authority to invoke the methods of serving process provided in the treaty. We believe that the treaty merely serves as an important adjunct to state long-arm rules, and that it specifies a valid method of effecting service only if the state long-arm rule authorizes service abroad.

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5. *Cf. Senate Executive Report* at 9 (Statement of Joe C. Barrett) ("this convention does not invade the domain of State law in the United States").

Further, we believe that the same principle applies to the use of the treaty in conjunction with the Federal Rules of Civil Procedure. Under rule 4, DeJames could serve process on Hitachi in Japan under either rule 4(e) or rule 4(i). However, service may be made under rule 4(e) only "[w]henever a statute of the United States or an order of court thereunder" or "a statute or rule of court of the state in which the district court is held" provides for service on a party who is not an inhabitant of or found within the forum state. Fed. R. Civ. P. 4(e). The alternative methods of serving process in a foreign country contained in rule 4(i) come into play only "[w]hen the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the forum state." Fed. R. Civ. P. 4(i). Therefore, in order for DeJames to validly serve process on Hitachi in Japan, there must not only be a method for effecting such service but also a state or federal statute authorizing service abroad.

Apart from the Federal Rules of Civil Procedure, DeJames points to no federal statute authorizing service of process in admiralty actions. Therefore, unless we hold that the treaty is the equivalent of such a federal service-of-process statute, DeJames is limited by either rule 4(e) or rule 4(i) to the authorization provided in the New Jersey long-arm rule. As we noted in our discussion of the purpose of the treaty, we do not believe that the treaty alone provides authorization for service abroad. Nor do we read the treaty as the equivalent of a federal statute authorizing service in a foreign country. Instead, we believe that the treaty is similar to rule 4(i) in that it provides a "manner" of service to be used by a litigant with the requisite authority to serve process. Were we to hold otherwise, we would attribute to the Senate that ratified the treaty the intent to authorize the equivalent of "world-wide" service of process in all federal-question, admiralty, and diversity cases while at the same time not authorizing nationwide service of process for those same

claims. In addition, such a holding would give the treaty a different effect when applied to federal rather than state courts.

Our review of the legislative history of the treaty does not reveal such an intent. To the contrary, the *Senate Executive Report* recommending ratification of the treaty provides that the treaty "is in keeping with the spirit and purpose of the law on this subject which is presently in effect in the United States and it will provide increased protection (due process) for American citizens who are involved in litigation abroad." *Senate Executive Report* at 3. Moreover, the testimony before the Senate Committee on Foreign Relations supports our view that the treaty was not intended to effect a change in the authority of courts in the United States to obtain personal jurisdiction over a foreign defendant. Richard D. Kearney, then Deputy Legal Adviser to the Department of State, discussed the liberal methods of serving process under rule 4(i) and stated that the Judicial Conference of the United States had endorsed the treaty as being in accord with the Federal Rules of Civil Procedure. *Senate Executive Report* at 6-7. The testimony of each person appearing before the Senate Committee emphasized that the treaty would not effect any substantial changes in the operation of courts in the United States, but would provide American citizens greater due process protection in litigation abroad.

In light of the legislative history, language, and purpose of the treaty, we believe that the treaty provides an important method of serving process in federal court litigation when a state or federal statute authorizes such service. It does not provide authority for serving process on a foreign defendant in the sense that the type of federal or state service-of-process statute referred to in rule 4(e) and rule 4(i) would provide. Therefore, we conclude that service of process on Hitachi in accordance with the terms of the treaty did not constitute service by "wholly federal means."

In order for DeJames to effect valid service through the use of the treaty, he had to rely on the New Jersey long-arm rule through rule 4(e) or rule 4(i), either of which permits reliance on a state statute that authorizes extraterritorial service of process. The treaty merely provides a method for effecting service to be used by a litigant with the requisite authority to serve process. Whether the service was effected in a manner consistent with the state long-arm rule, in accordance with rule 4(e), or the law of Japan, in accordance with rule 4(i)(1)(A), the authority to effect service is found in the state long-arm rule. Because we have held that Hitachi's contact with the State of New Jersey was insufficient to support the assertion of personal jurisdiction under the state long-arm rule, we affirm the district court's conclusion that it had no personal jurisdiction over Hitachi.

III.

The order of the district court dismissing the complaint against Hitachi will be affirmed.

GIBBONS, *Circuit Judge*, dissenting:

I agree with the majority that the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, 20 U.S.T. 361-367 (1969), does not afford a "wholly federal" means of service of process on a foreign national corporation. Like the majority, I believe the Convention, rather than creating an independent source of adjudicatory competence, facilitates and provides a uniform method of service of process pursuant to some already extant state or federal statute or rule. Unlike the majority, however, I believe Hitachi's relation to New Jersey satisfies the fourteenth

amendment due process concerns the Supreme Court enunciated in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). The majority relies on *World-Wide Volkswagen* to hold that Hitachi had no "reasonable expectation" of being haled before a court in New Jersey. The majority analogizes Hitachi to the local dealers involved in *World-Wide Volkswagen*. This analogy is off the mark.

In *World-Wide Volkswagen* the Supreme Court held that a local dealer may not be called to account in a distant place for a product not of its manufacture sold in a restricted market. The Court made clear that Judge Sobeloff's famous hypothetical of the California gas station owner who sells a tire that blows out following a cross country trip to Pennsylvania, *Erlanger Mills Inc. v. Cohoes Fibre Mills Inc.*, 239 F.2d 502, 507 (4th Cir. 1956), *cited in World-Wide Volkswagen, supra*, at 296, would remain confined to Civil Procedure texts. *See* Comment, *Federalism, Due Process and Minimum Contacts: World-Wide Volkswagen v. Woodson*, 80 Colum. L. Rev. 1341, 1358-61 (1980). At the same time, the Court reaffirmed the principle that a manufacturer who injects a product into the stream of interstate commerce may be subject to personal jurisdiction in the state where the product causes harm. 444 U.S. at 297. That manufacturer may be subject to a foreign state's jurisdiction even if his defective product arrived in the forum through the activities of a manufacturer or distributer further down the chain of production or sale. The Court's approving reference to the Illinois Supreme Court's celebrated decision in *Gray v. American Radiator and Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961), 444 U.S. at 298, is particularly pertinent here. In *Gray*, a defective valve made in Ohio was incorporated into a water heater manufactured in Pennsylvania. The water heater exploded in Illinois. Although Titan Valve Manufacturing Co. maintained it had no contacts with Illinois, the Illinois court held that Titan's indirect con-

tacts through the manufacture and sale of valves to be incorporated in water heaters destined for interstate markets, including Illinois, satisfied the *International Shoe* minimum contacts and fairness tests.

Thus, *World-Wide Volkswagen* permits assertion of jurisdiction over one who manufactures a finished product and sells it to another manufacturer or distributer who will send the product into interstate commerce, even though the first manufacturer's only direct contact with the forum state is the harm its product caused. One who forms an integral link in the chain of interstate manufacture or distribution is not a "local dealer." A local dealer is at the end of the chain of production or distribution. A local dealer has no interest in the ultimate destination of the goods once they have been purchased by the consumer. It did not matter to the New York car distributors in *World-Wide Volkswagen* or to Judge Sobeloff's California gas station owner whether, once purchased, their products traveled out of state or around the corner. These sellers derived no benefit from their customers' choice of where to take the product. In contrast, Titan Valve, while not directly responsible for the appearance of its product in Illinois, benefitted by selling its goods to American Radiator for inclusion in products intended for interstate sale. Titan could not reasonably claim not to expect, nor disavow the desire that its product would end up in foreign fora.

Applying these principles to Hitachi, it is readily apparent that Hitachi is not a local dealer. It is true that Hitachi converts bulk carriers to automobile carriers in Japan, to the order of Japanese vessel owners. It is also true that Hitachi does not control the ultimate destination of its products. But these facts do not reveal the whole story. Hitachi's ships are an integral part of the chain of international commerce in Japanese automobiles. Hitachi's ships carry Japanese automobiles to American and New Jersey ports. The Port of New York-New Jersey is this nation's largest, receiving over

185,292,125 tons of cargo per year. The New Jersey ports of Paulsboro, Camden-Glouster, and Trenton Harbor together account for another 28,533,725 tons per year. 1981 World Almanac and Book of Facts at 204. It is not "merely foreseeable," but virtually inevitable that ships Hitachi converts will dock in New Jersey.

Nor can it be said that Hitachi has no substantial interest in the destination of the ships it converts. Just as Titan Valve benefitted by sale of its products to another manufacturer who would send the valves into interstate commerce, so Hitachi benefits by selling its vessels to shipowners who will take them to New Jersey ports. Hitachi's ship conversion business is a vital component of the process of distribution of Japanese automobiles in the United States. The American market for Japanese cars enhances Hitachi's ship conversion business. The majority suggests this derivative benefit is too attenuated, for were there no American market for Japanese cars, Hitachi would convert vessels to something other than automobile carriers. Slip op. at 8. That argument misses the point. The relevant question is whether Hitachi's status as an intermediate link in the chain of Japanese car distribution benefits the business in which Hitachi is in fact engaged.

The majority also suggests that there is a dispositive distinction between Hitachi's relation to the vesselowners and a manufacturer who through a subsequent manufacturer or distributer "takes advantage of an indirect marketing scheme." Slip op. at 7. It is true that the vesselowners do not market Hitachi's ships. But both the vesselowners and Hitachi aid in the American marketing of Japanese cars. The majority looks at the wrong market. The relevant market is not the Japanese market for Japanese automobile carriers, but the market for which Japanese automobile carriers are essential—the American market for Japanese cars. I perceive no valid distinction between a manufacturer whose product serves as a link in the chain of production

of another product, and one whose product forms an essential link in the chain of distribution of another product, at least when sale of the second product directly promotes production and sale of the first product. Thus I would hold that assertion of personal jurisdiction in New Jersey over Hitachi is consistent with *World-Wide Volkswagen*.

Finally, while it is not crucial to the disposition of this case, I believe the misconception underlying the majority's statement that the fourteenth amendment governs amenability to suit on a federal claim, slip op. at 5, should be exposed and criticized. The fourteenth amendment due process clause does not properly apply in all its aspects to federal question claims. In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the Supreme Court established a two-pronged test to determine the constitutionality of a state's assertion of personal jurisdiction over an out-of-state defendant. A state's exercise of jurisdiction must comport with traditional notions of fundamental fairness, and it must be consistent with the values of federalism embodied in the fourteenth amendment. *See Jonnet v. Dollar Savings Bank*, 530 F.2d 1123, 1132, 1140 (3d Cir. 1976) (Gibbons, J., concurring). *Cf. World-Wide Wolkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). When a court asserts personal jurisdiction over a foreign defendant on the basis of a state law claim, it must ensure that the forum state does not unduly encroach on a sister state's interests. When a court, state or federal, adjudicates a federal claim, the federalism issue is of no relevance, for the court determines the parties' rights and liabilities under uniform, national law. No state intrudes on another's interests. The only relevant interest is the national one. Thus the applicable constitutional due process provision should not be the fourteenth amendment, but the fifth amendment.

The fifth amendment requires only that the forum be a fair and reasonable place at which to compel defen-

dant's appearance, and that he have had notice and a reasonable opportunity to be heard. *See Stabilisierungsfonds fur Wein et al. v. Kaiserstuhl Wine Distributors Pty. Ltd. et al.*, No. 79-1392 (D.C. Cir. March 23, 1981), Slip op. at 5 & n.4. A defendant's *national* contacts enter into the fifth amendment fairness analysis, for it would be unreasonable to subject to suit in the United States a foreign national defendant who had but one fleeting connection with this country. But it is not necessary, under the fifth amendment due process clause, that that defendant's contacts relate primarily to the particular United States location in which the claim arose. Thus, for example, it would not be unfair under the fifth amendment to subject a foreign national shipper to suit in New Jersey on the basis of an admiralty claim that arose in that state, even if the offending ship was the only one ever to dock in New Jersey, and all of defendant's other ships land in Texas. The hypothetical defendant has sufficient contacts with the United States, and the availability of witnesses points to the District of New Jersey as the most convenient forum for the litigation. *Cf. Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) (central concern of jurisdictional inquiry is relationship among the defendant, the forum, and the litigation).

Similarly, were a state court adjudicating a federal claim, the relevant due process standard should remain the fifth amendment. The nature of the claim, not the identity of the court, should determine the appropriate due process test. New Jersey has enacted a "constitutional" long arm: its courts may assert personal jurisdiction to the limits of the relevant due process clause. A federal court in a federal question case referred under Federal Rule of Civil Procedure 4(e) to the New Jersey long arm thus must ask two questions: Would assertion of personal jurisdiction violate the fifth amendment? and, Has New Jersey placed any restriction on the constitutionally exercisable scope of jurisdiction? The an-

swer to the second question is no, and therefore when addressing a federal claim, the federal court, or for that matter, a New Jersey court, need consider only the issue of fifth amendment fairness in determining whether to assert personal jurisdiction over the foreign defendant.

On the other hand, one might ask whence derives a state legislature's authority to enact a competence statute of national application. The majority implies that a state legislature may permit assertion of adjudicatory competence to the limits of judicial jurisdiction under the fourteenth amendment, but it may not implement the fifth amendment by conferring competence to the limits of the federal due process clause. But a state long arm implements neither the fourteenth nor the fifth amendment. A state's authority to promulgate rules of competence derives from a state's sovereign power to adjudicate state law and federal question cases, and indeed to rule on controversies arising under a foreign nation's law. This power is preserved to the states through the tenth amendment, although it may be limited by congressional provision for exclusive federal court subject matter jurisdiction.[1] The fifth amendment simply defines the boundaries within which a state may adopt a rule of competence to assert personal jurisdiction in federal question cases.

Thus, while Rule 4(e) has the effect of converting a federal court into a state court for purposes of determining personal jurisdiction, the rule does not automatically make the fourteenth amendment the guiding due process provision. The rule's real "anomaly" arises in in-

1. In the case of admiralty claims, federal court jurisdiction is exclusive over the subject matter, but state laws concerning competence to assert personal jurisdiction still obtain, since rather than preempting them with an applicable federal competence statute, Congress through rule 4(e) has referred back to state rules of adjudicatory competence. *Compare* 15 U.S.C. §77v (Securities Exchange Act of 1933); 15 U.S.C. §78aa (Securities Exchange Act of 1934).

stances where a federal court is referred to the long arm of a state whose legislature, unlike New Jersey's, has determined not to permit assertion of personal jurisdiction to the full extent constitutionally permissible. In those instances, Congress' failure to enact a general federal question competence statute has the result of bringing to bear on federal claims, to which federalism concerns have no relevance, individual state legislatures' decisions in effect to protect out-of-state defendants from suit on state law claims. *Cf.* von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1123-25 n.6 (referencing cases in which general federal policies qualify statutory incorporation of state law, and suggesting courts disregard state law provisions that are irrelevant in the federal context).

Since both as a matter of fourteenth amendment due process and as a matter of fifth amendment due process, the majority's analysis of jurisdiction to adjudicate in this case is flawed, I dissent. I would reverse the judgment dismissing the complaint for lack of personal jurisdiction.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSEPH DeJAMES,
Plaintiff
v.
MAGNIFICENCE CARRIERS, INC.,
VENTURE SHIPPING (MANAGERS LTD.)
NIPPON YUSEN KAISHA,
HITACHI SHIPBUILDING and ENGINEERING CO., LTD., and
USUKI TEKKOSHO,
Defendants.

CIVIL ACTION NO. 78-2892
OPINION

APPEARANCES:
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Engineering Co., Ltd.

ORIGINAL FILED JUNE 18, 1980
ANGELO W. LOCASCIO, CLERK

COHEN, Senior Judge:

Plaintiff, Joseph DeJames, a New Jersey citizen, has brought suit under the admiralty jurisdiction of the court, 28 U.S.C. §1333, to recover damages for personal injuries suffered while working aboard the vessel M.V. Magnificence Venture. The injuries allegedly occurred on January 26, 1977, while the vessel was moored at a pier in Camden, New Jersey.

According to the pleadings defendant, Hitachi Shipbuilding and Engineering Co., Ltd. (Hitachi), entered into a contract in Japan with defendants Magnificence Carriers, Inc., Venture Shipping (Managers Ltd.), and Nippon Yusen Kaisha, the charterers of the vessel, M.V. Magnificence Venture, whereby Hitachi agreed to convert the vessel into an automobile carrier. Plaintiff alleges in his complaint that the conversion work

performed by Hitachi was defective and was the direct cause of his injuries.

Presently before the court is a motion by Hitachi to dismiss the complaint against it for insufficiency of service and for lack of in personam jurisdiction. Hitachi contends that it does not maintain the requisite contacts with New Jersey to enable this court to render a binding personal judgment against it. In support thereof, Hitachi has submitted an affidavit from Kiyoshi Ohno, manager of its ship repair business department located in Tokyo, Japan. According to the affidavit, Hitachi completed all work on the vessel at issue in its Japanese shipyard and had no further contact or involvement with the ship once it left Osaka, Japan. The affidavit further states that Hitachi does not maintain an office in New Jersey, nor does it have an agent of any type there or transact any business in the State.

At the outset it should be noted that when a federal court is asked to exercise personal judgment over a defendant sued on a claim arising out of federal law, federal law under the due process clause of the fifth amendment is controlling. See Honeywell, Inc. v. Metz Apparatewerke, 506 F.2d 1137, 1143 (7th Cir. 1975); Fraley v. Chesapeake and Ohio Railway Company, 397 F.2d 1, 304 (3d Cir. 1968); Alco Standard Corp. v. Benalal, 345 F. Supp. 14, 24-25 (E.D. Pa. 1972). That is not to say, however, that the analysis employed in diversity jurisdiction cases arising under the fourteenth amendment has no bearing on our decision in this case. In this regard, the Court of Appeals for the Third Circuit has remarked that the standard of due process set forth by the Supreme Court in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny is equally

applicable in cases grounded on a federal claim. See Fraley, 397 F.2d at 3; Goldberg v. Mutual Readers League, Inc., 195 F.Supp. 778, 782-83 (E.D. Pa. 1961); accord, Wells Fargo & Co. v. Wells Fargo Exp. Co., 556 F.2d 406, 416 n.7 (9th Cir. 1977); Honeywell, Inc., 509 F.2d at 1143.

In response to Hitachi's motion to dismiss, plaintiff argues first, that Hitachi's contacts with New Jersey are sufficient for the purposes of jurisdiction, and seond, that where, as here, the court is to determine whether it has jurisdiction over a defendant who is being sued on a federal claim, it may consider not only the defendant's contacts with the forum state, but also the aggregate contacts of the defendant with the United States as a whole. We take up these arguments in turn.

I.
HITACHI'S "MINIMUM CONTACTS" WITH NEW JERSEY

In order to determine whether the court may acquire jurisdiction over Hitachi based on its New Jersey contacts, we must first examine the principles set forth in the International Shoe line of cases.

In International Shoe, the Supreme Court ruled that

> [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

326 U.S. at 316.

McGee v. International Life Insurance, 350 U.S. 220 (1957) further amplified the doctrine. In that case, suit was brought in California against a foreign insurance company on a policy issued to a California resident. The contract was delivered

in California, the premiums were mailed from there, and the insured was living in California when he died. Although the defendant insurer did no other business in California, the court ruled that it was subject to suit there based on the "substantial connection" of the contract itself to the State of California.

Finally, in Hanson v. Denckla, 357 U.S. 235 (1958), the Supreme Court held that

> [t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

Id. at 253. The Court further elaborated that a court "does not acquire . . . jurisdiction by being the 'center of

gravity' of the controversy, or the most convenient location for litigation." Id. at 254.

It is against this background that we must determined whether the presence of a ship in New Jersey upon which the defendant, Hitachi, had performed conversion work in Japan and the occurrence of an injury allegedly caused by that work, are sufficient bases upon which to subject Hitachi to suit in New Jersey.

Upon careful review of the record, the court finds that the degree and nature of Hitachi's contacts with New Jersey do not satisfy either the "minimum contacts" standard set forth in International Shoe or the "substantial connection" test advanced in McGee. Unlike the corporate defendants in those cases, the corporation in the case at bar, Hitachi, does no business in the forum state, does not maintain an office there, nor employ any

marketing or distribution scheme to have its "products" sold in New Jersey.

Plaintiff, however, argues that the nature of Hitachi's business, which involves the building and conversion of merchant vessels to be used in trade all over the world, warrants the exercise by this court of jurisdiction over Hitachi. Specifically, plaintiff argues that a company which delivers ships into the stream of commerce should reasonably anticipate that its "product" will touch ports throughout the world, and, concomitantly, should expect to be haled into court in any forum where a defect in one of its ships causes harm.

Among those cases relied upon by the plaintiff is Benn v. Linden Crane Co., 326 F.Supp. 995 (E.D. Pa. 1971). In Benn, a Swedish manufacturer had sold a crane f.o.b. Swedish port to a purchaser in Connecticut that had an exclusive dis-

tributorship of the manufacturer's products in the United States. Evidence was submitted indicating that the defendant manufacturer knew some of its cranes would end up in Pennsylvania. Based upon these facts, the court held the deferdant subject to jurisdiction in Pennsylvania in a products liability action, finding that it had made an "indirect shipment" of goods into Pennsylvania and was "doing business" there. Id. at 997. Plaintiff also cites Smiley v. Gemini Investment Corp., 333 F.Supp. 1047 (W.D. Pa. 1971). There, a federal court in Pennsylvania exercised jurisdiction over a California distributor who, in turn, shipped the goods to Pennsylvania. The court reasoned that "the defendant, although not physically present in Pennsylvania, as an importer and distributor is an indispensable element in the distributive chain, and

occupies a vital position of controlling the flow of such articles into the Commonwealth." Id. at 1048. Plaintiff also relies upon Keckler v. Brookwood Country Club, 248 F.Supp. 645 (N.D. Ill. 1965), which adopted the same "stream of commerce" rationale. In that case, indirect shipment of a golf cart by an Indiana corporation, which allegedly caused an injury to the plaintiff in Illinois, was held sufficient contact with Illinois to allow in personam jurisdiction there. In so rulling, the Keckler court remarked:

> The manner in which the injury-producing defect came about has no impact on the question of jurisdiction: the jurisdicational act is not the creation of a defect, but the distribution of defective products in a national way. When a manufacturer voluntarily chooses to sell his product in a way in which it will be resold from dealer to dealer, transferred from hand to hand, and transported from state to state, he cannot reasonably claim that he is surprised at being held to answer in any state for the damage the product causes.

Id. at 649 (emphasis in original); accord; Oswalt v. Scripto, Inc., 616 F.2d 191 (5th Cir. 1980); Blum v. Kawaguchi, Ltd., 331 F.Supp. 216 (D. Deb. 1971); Gill v. Fairchild Hiller Corp., 312 F.Supp. 916 (D.N.H. 1970); Certisimo v. Heidelberg Co., 122 N.J. Super 1, 298 A.2d 298 (Law Div. 1972), aff'd, 124 N.J. Super. 251, 306 A.2d 79 (App. Div. 1973).

A close analysis of the "stream of commerce" decisions reveals that the manufacturers or distributors involved in those cases had all made a deliberate decision to market their products in the forum state either directly or indirectly by utilizing an interstate distribution network. While most of the parties involved did not themselves deal with anyone in the forum state, the courts took the position that the companies had placed their products into the forum by virtue of their knowing use of a distributive

scheme. In the instant case, by contracts, there was no distributive or marketing scheme whereby Hitachi sought to have the vessel in question marketed and sold through channels to a New Jersey resident. Hitachi's sole involvement with the vessel was under a contract made in Japan between itself and the ship's owners under which Hitachi performed certain conversion work on the ship. It had no control over the ship once it left Japan. It made no decision to send the ship into New Jersey, nor did it seek to benefit from the laws of New Jersey or derive any profit there, either directly or indirectly.

As noted earlier, plaintiff argues that it is sufficient for jurisdictional purposes that Hitachi could anticipate a lawsuit anywhere in the world since its ships or ships upon which it worked travel globally. The Supreme Court recently addressed the same argument in World-Wide

Volkswagen Corp. v. Woodson, 48 U.S.L.W. 4079 (January 21, 1980). In that case, a products liability action was instituted in Oklahoma by New York residents who were injured in Oklahoma while driving to a new home. The automobile in question was purchased in New York, and the defendants included the automobile retailer and its wholesaler, both of whom were New York corporations having no contacts with the State of Oklahoma. The Court held that due process would not permit Oklahoma to impose jurisdiction over the retailer or distributor. In so doing, it rejected the argument that jurisdiction was proper because the mobility of automobiles made it "foreseeable" that a purchaser in New York might drive the automobile through Oklahoma. Id. at 4082. The court reasoned that

> the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state.

> Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there. [Citations omitted.] The Due Process Clause, by ensuring the "orderly administration of the laws," International Shoe Co. v. Washington, 326 U.S., at 319, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to whether that conduct will and will not render them liable to suit.

Id.[1]

1. See also Heckel v. Beech Aircraft Corp., 467 F.Supp. 278 (W.D. Pa. 1979) (airplane crash held insufficient as sole basis for jurisdiction over non-resident aircraft repair shop); Kerrigan v. Clark Graveley Corp., 71 F.R.D. 480 (M.D. Pa. 1975) (occurrence of tractor accident in Pennsylvania does not, by itself, support the assertion of in personam jurisdiction over tractor repair shop in New Jersey); Miller v. Cousins Properties, Inc., 378 F.Supp. 711 (D. Vt. 1974) (airplane accident insufficient contact with state to warrant jurisdiction over out-of-state corporation); Knapp v. Franklin Coach Co., 365 F.Supp. 305 (W.D. Pa. 1973) (automobile accident in Pennsylvania held insufficient contact with State to subject Ohio repair shop to jurisdiction there); Uppgren v. Executive Aviation Services, Inc., 304 F.Supp. 165 (D. Minn. 1969) (presence of allegedly defective helicopter in Minnesota causing injury to plaintiff within the state does not warrant exercise of jurisdiction over Maryland retail dealer in Minnesota.

Thus, while it is true that "very minimal contacts are required to satisfy due process," Columbia Metal Culvert Co. v. Kaiser Industries Corp., 526 F.2d 727, 730 (3d Cir. 1975), it is also clear that "it is a mistake to assume that . . . [there are no longer any] restrictions on the personal jurisdiction of state courts." Hanson v. Denckla, 357 U.S. at 251. It is still required "that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State." Id. at 253 (quoted in World-Wide Volkswagen, 48 U.S.L.W. at 4082).

There has been no such act of Hitachi demonstrated in this case. Therefore, the motion to dismiss for lack of jurisdiction and for insufficiency of service, were it to be based solely on Hitachi's contacts with New Jersey, should be granted.

II. THE "NATIONAL CONTACTS" APPROACH

Since Hitachi's contacts with New Jersey appear insufficient for the exercise of the court's jurisdiction, it is necessary to determine whether Hitachi's national contacts may be considered.[2]

The earliest case adopting the national contacts approach is First Flight Co. v. National Carloading Corp., 209 F.Supp. 730 (E.D. Tenn. 1962). That court held that the proper inquiry in determining personal jurisdiction in a case involving federal rights is one related to the contacts with the sovereignty in questions, the United States. Id. at 738. The theoretical basis

2. In the course of discovery, plaintiff had issued interrogatories to Hitachi, requesting information on the extent of its nationwide contacts. When Hitachi objected that the interrogatories were too burdensome, plaintiff agreed to limit the inquiry to Hitachi's New Jersey contacts. As a result, no discovery has ever been done on the extent, if any, of Hitachi's national contacts.

behind this approach is that the restrictions of the fourteenth amendment upon state jurisdiction have no application to a cause of action arising under federal law. Instead, the argument runs, the fifth amendment due process clause controls, and a defendant's national contacts may be aggregated to satisfy that standard. See generally, Fink, Indispensable Parties and the Proposed Amendment to Federal Rule 19, 74 Yale L.J. 403, 443-44 n. 155 (1965); Green, Federal Jurisdiction In Personam of Corporations and Due Process, 14 Vad. L. Reve. 967 (1961); von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1123-25 n.6 (1966); Note, 9 Vand. J. of Transnat'l L. 435 (1976). As described by one court, "it is not the territory in which a court sits that determines the extent of its jurisdiction, but rather the geographical limits

of the unit of government of which the court is a part." Cryomedics, Inc. v. Spembly, Ltd., 397 F.Supp. 287, 291 (D. Conn. 1975); accord, Centronics Data Computer Corp. v. Mannesmann, 432 F.Supp. 659, 663-64 & n.1 (D.N.H. 1977) (quoting First Flight, 209 F.Supp. at 736-37); Holt v. Klosters Rederi A/S, 355 F.Supp. 354, 357 (W.D. Mich. 1973); Alco Standard Corp. v. Benalal, 345 F.Supp. 14 (E.D. Pa. 1972); Edward J. Moriarity & Co. v. General Tire & Rubber Co., 289 F.Supp. 381, 390 (S.D. Ohio 1967).

Although the fifth amendment test is sometimes expressed in more general "fairness" terms, see, e.g., Honeywell, Inc., 509 F.2d at 1143 (citing Galvan v. Press, 347 U.S. 522, 530 (1954), the International Shoe line of cases (discussed supra in Part I) provides the foundation for the test, and the analysis is substantially similar. See Honeywell,

Inc., 509 F.2d at 1143; First Flight, 209 F.Supp. at 738 (E.D. Tenn. 1962). Accordingly, the standard which has been applied by those courts adopting the national contacts approach is whether defendant "has such minimum contacts with the United States that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice." Holt v. Klosters Rederi A/S, 355 F. Supp. at 357 n.2 (quoting First Flight, 209 F.Supp. at 738); See Engineering Equipment Co. v. S.S. Selene, 446 F.Supp. 706, 709 (S.D. N.Y. 1978).

One of the principal policy considerations underlying the national contacts theory is the belief that in this age of multinational conglomerates a corporation headquartered in a foreign land is no more inconvenienced by a trip to one state than to another. E.g., Centronics Data Computer Corp. v. Mannesmann, A.G., 432 F.Supp. at 663;

Cyomedics, Inc. v. Spembly, Limited, 397 F.Supp. at 291. It should be noted that the growing nationalization of commerce in this country and the expansion in mobility were most recently acknowledged as jurisdictional considerations by Justice Brennan in World-Wide Volkswagen Corp., 48 U.S.L.W. at 4085 & n. 13 (Jan. 21, 1980) (Brennan, Jr., dissenting). Another reason for the application of the theory is the possibility that a foreign corporation "could commit serious torts or contract breaches without ever having enough contacts with any one forum to give those injured an opportunity to seek redress." Centronics Data Computer Corp. v. Mannesmann, A.G., 432 F.Supp. at 664 (noting Engineered Sports Products v. Brunswick Corp., 362 F.Supp. 772, 728 (D. Utah 1973)). In this connection, one commentator in favor of the national contacts approach has argued that the burden of forcing an alien to defend an action in a distant

land must be balanced against that of a plaintiff for whom no other remedy might exist. Note 9, Vand. J. of Transnat'l L. 435, 444 (1976). Finally, it has been urged that "[i]f the aggregate contacts approach were common, substantially greater justice might be achieved as alien defendants are forced as a condition of being allowed to cultivate and reap profits from a foreign country's market, to recognize their responsibility to the foreign country that consumes their product." Id.

Since the First Flight opinion discussed the national contacts theory in 1962, several jurisdictions have considered the approach in federal question cases. But most courts which have analyzed the theory have refused to apply it and have instead looked solely to state contacts as a basis for jurisdiction. While these courts generally acknowledge the logic of inquiring into a defendant's contacts with the United States where the

suit is based upon a federally created right, they reason that they must have a federal rule or statute authorizing nationwide or worldwide service of process before doing so. See, e.g., Wells Fargo & Co. v. Wells Fargo Exp. Co., 556 F.2d 406, 418 (9th Cir. 1977) (refused to aggregate national contacts since Lanham Act did not grant the court broad services of process power); Superior Coal Co. v. Ruhrkohle, A.G., 83 F.R.D. 414, 418-20 (E.D. Pa. 1979) (rejected national contacts theory in action instituted under the Clayton and Anti-dumping Acts); Harem-Christensen Corp. v. M.S. Frigo Harmony, 477 F.Supp. 694, 697 n.1 (S.D. N.Y. 1979) (service of process in admiralty action must satisfy prerequisites to application of New York long-arm statute); Amburn v. Harold Forster Indus., Ltd., 423 F.Supp. 1302 (E.D. Mich. 1976) (court limited to considering contacts with state in patent

infringement action in the absence of authority for nationwide service of process); Graham Engineering Corp. v. Kemp Products, Ltd., 418 F. Supp. 915, 919-20 (N.D. Ohio 1976) (same); Ag- Tronic, Inc. v. Frank Pavior Ltd., 70 F.R.D. 393, 401 (D. Neb. 1976) (same); Stanley v. Local 926, International Union of Operating Engineers, AFL-CIO, 354 F. Supp. 1267, 1271 n.3 (N.D. Ga. 1973) (must look to state contacts in action brought under the Civil Rights Act and the Manpower Development and Training Act of 1962); Edward J. Moriarity & Co. v. General Tire & Rubber Co., 289 F. Supp. 381, 389-90 (S.D. Ohio 1967) (must meet qualifications for state long-arm statute in action brought under the Sherman Act); Scott v. Middle East Airlines Co., S.A., 240 F. Supp. 1,3-4 (S.D. N.Y. 1965) (state contacts and not just national contacts required for

jurisdiction in admiralty action brought under Death on the High Seas Act); Goldberg v. Mutual Readers League, Inc., 195 F. Supp. 778,782-83 (E.D. Pa. 1961) (apply state contacts analysis in action arising under Fair Labor Standards Act.)

A review of the pertinent case law reveals that the over whelming majority of courts which have considered the national contacts approach have rejected its application in the absence of statutory authority for service of process. After careful analysis of the rationale underlying these decisions, the court finds that it must join their ranks. We, therefore, reject plaintiff's contention in the instant matter that defendant Hitachi's national contacts may be aggregated as a basis for the exercise of jurisdiction over Hitachi.

The court's opinion in the case at bar, however, should not be construed as a total rejection of the national contacts

theory. On the contrary, the court believes that it is not unfair nor unreasonable as a matter of due process to consider the nationwide contacts of an alien defendant in determining whether jurisdiction exists. As noted by Judge Wilson in his opinion in First Flight,

> One fundamental principle of the Anglo-American law of jurisdiction is that a sovereignty has personal jurisdiction over any defendant within its territorial limits, and that it may exercise that jurisdiction by any of its courts able to obtain service upon the defendant.

209 F. Supp. at 736. This court also believes that many good policy reasons exist for applying the national contacts theory, particularly in those federal question cases involving alien defendants. In addition to affording greater protection to the rights of domestic plaintiffs, the national contacts approach would promote greater uniformity of treatment in actions involving federal rights since the jurisdiction of

the federal court would not depend upon the liberality of conservatism of the laws of the state in which the court sits. See Hartley v. Sioux City & New Orleans Barge Lines, Inc., 379 F. 2d 354, 356 n.2 (3d Cir. 1967) (by implication); Bohman, Applicability of Shaffer to Admiralty In Rem Jurisdiction, 53 Tul. L. Rev. 135, 161-62 (1978); Note, 9 Vand. J. of Transnat'l L. 435 (1976)

We also recognize, however, that the United States has by the enactment of the Federal Rules of Civil Procedure imposed restrictions upon the exercise of personal jurisdiction by its courts. One such restriction, relevant to the case at bar, is that imposed by Rule 4(e), which provides that when substituted service is made pursuant to a state's long-arm statute, the service be made "under the circumstances and in the manner prescrubed in the statute". Fed. R. Civ. P. 4(e)(2). That

portion of the Rule has been interpreted to mean that service under a valid state long-arm statute in a federal court is only possible in those situations where the in-state activities of the defendant would be sufficient to invoke the long-arm statute had the defendant been sued in state court. See, e.g., Hydraulics Unlimited Mfg. Co. v. B/J Manufacturing Co., 449 F. 2d 775, 777 (4th Cir. 1971); Upper Mississippi Towing Corp. 423 F. 2d 535, 547 n.2 (3d Cir. 1970), (quoting Hartley v. Sioux City and New Orleans Barge Lines, Inc., 379 F. 2d at 356 & n.2 (3d Cir. 1967)); Fraley v. Chesapeake and Ohio Railway Co., 397 F. 2d 1 (3d Cir. 1968); Amburn v. Harold Forster Indus. Ltd., 423 F. Supp. 1302, 1305 (E.D. Mich. 1976); see generally, 4 C. Wright & A. Miller, Federal Practice and Procedure, §1075, at 313 (2d ed. 1969). Thus, where service of process is effected by means of a state statute, a federal court

is forced to look to the state in which the district is located to determine whether jurisdiction may be asserted over an out-of-state defendant.[3]

While the Third Circuit has never fully addressed the national contacts approach

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[3] According to one commentator, state law should always control the exercise of jurisdiction when a state statute is used pursuant to Rule 4(e):

> Although the opposite result has some appeal in that it permits effectuation of federal interests in a broader range of suits, it is inconsistent with the apparent intent of the draftsmen of Rule 4(e) to use state provisions for service in order to permit the federal courts in a state to hear those cases that could be brought in the state's own courts when a basis for asserting federal subject matter jurisdiction exists.

4 C. Wright & A. Miller, Federal Practice and Procedure, §1075, at 313 (2d ed. 1969).

theory in any opinion, it has considered whether state statutory procedures for effectuating service of process may serve to limit the jurisdiction of a federal court. In Hartley v. Sioux City & New Orleans Barge Lines, Inc., a seaman brought suit in Pennsylvania against a foreign corporation under the Jones Act and in admiralty for injuries sustained in an accident which occurred on a river in Illinois. As a first step, the court recognized that federal courts considering federal questions may exercise jurisdiction subject only to the restrictions imposed by the due process clause of the fifth amendment. 379 F. 2d at 356. The court then proceeded to rule, however, that where service of process has been performed pursuant to a state statute, "the adequacy of service of process must be determined by that rule." Id. (footnote omitted).

the court then looked to state law in determining whether it could exercise jurisidtion in the case. Thus, the court recognized that when state procedures are employed, the jurisdiction of a federal court in a federal question case is limited by the law of the forum state. See id. & n.2.

Plaintiff has urged the court to exercise jurisdiction on the ground that New Jersey's long-arm rule, R.4:4-4, N.J. Court Rules (the rule employed in the case at bar) has been construed as extending New Jersey's jurisdictional reach to its constitutional limits. See Avdel v. Mecure, 58 N.J. 264, 268, 277 A. 2d 207, 209 (1971). The power of the State of New Jersey, however, is still limited by the due process requirements of the fourteenth amendment. There must still be some contact of a defendant with the forum state.

It is important to note that our rejection of the national contacts approach in the instant matter, is limited to those factual situations where service of process must be made pursuant to a state statute. We believe that where service can be effected through wholly federal means, a defendant's national contacts may still be a viable basis for jurisdiction in a federal question case. Thus, for instance, where Congress has provided for nationwide service of process, we can perceive of no impediment to the application of the national contacts theory with the exception of the fifth amendment's "fairness" standard. There would be no need to make reference to any state law in making service, see Rule 4(f), and concommitantly, no need to consider any fourteenth amendment or state restrictions on that service. See, e.g., Alco Standard Corp. v. Benalal, 345 F. Supp. 14, 25

(E.D. Pa. 1972) (In action brought under Securities and Exchange Act, which provides for nationwide service of process, court ruled that since the Act is national in scope, the court's jurisdictional inquiry should focus on a defendant's national contacts.) The same result would also seem appropriate when service of process is made pursuant to Rule 4(d)(3), which provides for service "[U]pon a . . . foreign corporation . . . by delivering a copy of the summons and of the complaint to . . . [an] agent authorized by appointment or by law to receive service of process". Rule 4(d)(3), like Rule 4(f), provides for a strictly federal method of service, and thus, like that Rule, does not implicate any state law limitations on jurisdiction. See First Flight, 209 F. Supp. at 375; see also Angel v. Burlington, 330 U.S. 183, 192 (1947); Hartley v. Sioux City and New Orleans Barge Lines, Inc., 79 F. 2d at 356.

Since Congress has not enacted a federal statute authorizing nationwide service of process in admiralty actions, and since the district court's power in the present matter is therefore limited by the Federal Rules of Civil Procedure and, through them, the laws of New Jersey, we find the relevant jurisdictional inquiry to be the extent of the defendant Hitachi's contacts with New Jersey. And since we have determined that Hitachi lacks sufficient contacts with New Jersey to satisfy the jurisdictional standards set forth in International Shoe and its progeny, defendant Hitachi's Motion to Dismiss must be granted.

Mitchell H. Cohen, Senior Judge
United States District Court

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 80-2209

JOSEPH DeJAMES,

Appellant

v.

MAGNIFICENCE CARRIERS, INC., VENTURE SHIPPING (MANAGERS LTD), NIPPON YUSEN KAISHA, HITACHI SHIP BUILDING AND ENGINEERING COMPANY, LTD., and USUKI TEKKOSHO

(D.C. Civil No. 78-02892)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: SEITZ, Chief Judge and
VAN DUSEN and GIBBONS,
Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel on March 19, 1981.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, entered July 7, 1980, be and the same is hereby affirmed. Costs taxed against appellant.

ATTEST:

s/Sally Mvros

Clerk

July 9, 1981

Certified as a true copy and issued in lieu of a formal mandate on July 31, 1981.

Costs taxed in favor of appellee as follows:

Brief.....$227.20

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 80-2209

JOSEPH DeJAMES,

Appellant

v.

MAGNIFICENCE CARRIERS, INC., VENTURE SHIPPING (MANAGERS LTD.), NIPPON YUSEN KAISHA, HITACHI SHIPBUILDING AND ENGINEERING COMPANY, LTD., and USUKI TEKKOSHO

(Civil No. 78-02892 - D.N.J.)

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, VAN DUSEN, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, and SLOVITER, Circuit Judges

The petition for rehearing filed by Appellent in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service,

and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

s/ Seitz
Chief Judge

Dated: July 23, 1981

Judges Joseph F. Weis, Jr., and Dolores K. Sloviter would grant the petition for rehearing.

Judge John J. Gibbons dissents from the denial of rehearing. Judge A. Leon Higginbotham dissents from the denial of rehearing.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSEPH DeJAMES,
Plaintiff

v.

MAGNIFICENCE CARRIERS, INC.
VENTURE SHIPPING (MANAGERS LTD.)
NIPPON YUSEN KAISHA,
HITACHI SHIPBUILDING AND ENGINEERING CO., LTD., and
USUKI TEKKOSHO,
Defendants

CIVIL ACTION NO. 78-2892

ORDER

This matter having been brought before the Court upon a Motion to Dismiss by defendant, Hitachi Shipbuilding and Engineering Company, Ltd., for lack of in personam jurisdiction and for insufficiency of service of process;

For the reasons stated in the Court's opinion filed this date;

It is on this 18th day of June, 1980 ORDERED that the Motion to Dismiss be and is hereby granted.

s/Mitchell H. Cohen
MITCHELL H. COHEN,
SENIOR JUDGE
UNITED STATES DISTRICT COURT

ORIGINAL FILED
June 18, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOSEPH DeJAMES,
Plaintiff

v.

MAGNIFICENCE CARRIERS, INC.,
VENTURE SHIPPING (MANAGER LTD.),
NIPPON YUSEN KAISHA,
HITACHI SHIPBUILDING AND ENGINEERING
CO., LTD., and
USUKI TEKKOSHO,
Defendants

Civil Action No. 78-2892

ORDER

This is to certify pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that the undersigned hereby directs the entry of a final judgment for defendant, Hitachi Shipbuilding and Engineering Co., Ltd., against plaintiff, Joseph DeJames, upon the Order of this Court dated June 18, 1980, granting a motion to dismiss by defendant, Hitachi

Shipbuilding and Engineering Co., Ltd., and the undersigned expressly determines that there is no just reason for delay and expressly directs the entry of such judgment.

s/Mitchell H. Cohen
MITCHELL H. COHEN, SENIOR JUDGE
UNITED STATES DISTRICT COURT

DATED: July 7, 1980

Original Filed July 7, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOSEPH DeJAMES,
Plaintiff

v.

MAGNIFICENCE CARRIERS, INC.,
VENTURE SHIPPING (MANAGER LTD.),
NIPPON YUSEN KAIHSA,
HITACHI SHIPBUILDING AND ENGINEERING
CO., LTD., and
USUKI TEKKOSHO,
Defendants

Civil Action No. 80-2892

CIVIL JUDGMENT

Before the Honorable Mitchell H. Cohen, Senior Judge

AND NOW, this 24th day of July, 1980, in accordance with the Order of this Court dated July 7, 1980,

IT IS ORDERED that judgment be and the same is hereby entered in favor of defendant, Hitachi Shipbuilding and Engineering Co., Ltd., against plaintiff,

Joseph DeJames.

s/John F. Gerry, U.S.D.J.
UNITED STATES DISTRICT COURT
JUDGE, JOHN F. GERRY

DATED: July 24, 1980

Original Filed July 25, 1980

Opposition

Office - Supreme Court, U.S.
FILED
NOV 5 1981
ALEXANDER L. STEVAS
CLERK

No. 81-659

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

JOSEPH DEJAMES, *Petitioner*

v.

MAGNIFICENCE CARRIERS, INC., VENTURE SHIPPING (MANAGERS LTD.), NIPPON YUSEN KAISHA, HITACHI SHIPBUILDING & ENGINEERING CO., LTD., and USUKI TEKKOSHO, *Respondents*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF RESPONDENT HITACHI SHIPBUILDING & ENGINEERING CO., LTD. IN OPPOSITION

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW [1]

1. Was the Court of Appeals correct in its holding that, under the facts of this case, the relevant contacts for purposes of determining the presence or absence of personal jurisdiction over Respondent Hitachi are those of said Respondent with the State of New Jersey?

2. Was the Court of Appeals correct in its holding that the District Court for the District of New Jersey lacked personal jurisdiction over Respondent Hitachi, a Japanese corporation, when Hitachi's only connection with the State of New Jersey was the fortuitous circumstance that a single ship, upon which it had performed conversion work in Japan but over which it exercised no control thereafter, later became the site of Petitioner's accident while moored to a pier in Camden, New Jersey?

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1. Respondent Hitachi Shipbuilding & Engineering Co., Ltd. ("Hitachi") objects to so much of Petitioner's statement of Questions Presented for Review as involves the inclusion of facts which are neither contained in nor supported by the record.

Petitioner's statement of Question No. 1 implies that the purpose of Hitachi's conversion work was to create an automobile carrier "designed to carry automobiles from Japan to United States ports." In his statement of Question No. 3, Petitioner implies that Hitachi converted the ship into an automobile carrier "as a link in the chain of distribution of Japanese automobiles from Japan to United States ports."

The record contains no evidence indicating either the existence or nature of any intended use of the ship upon conversion. Moreover, the record contains no evidence indicating that Hitachi knew of or was in any way concerned with whatever use would be made of the ship upon conversion.

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No. 81-659

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1981

JOSEPH DEJAMES,

Petitioner

v.

MAGNIFICENCE CARRIERS, INC., VENTURE SHIPPING (MANAGERS LTD.), NIPPON YUSEN KAISHA, HITACHI SHIPBUILDING & ENGINEERING CO. LTD., and USUKI TEKKOSHO,

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF RESPONDENT HITACHI SHIPBUILDING & ENGINEERING CO., LTD. IN OPPOSITION

Respondent Hitachi[2] respectfully requests that this Court deny the Petition for Writ of Certiorari.

2. There are no parent companies, subsidiaries (other than wholly-owned subsidiaries) or affiliates of Hitachi Shipbuilding & Engineering Co., Ltd. *See* Rule 28.1, Supreme Court Rules.

OPINIONS BELOW

The opinion of the Court of Appeals, which affirmed the judgment of the District Court, is reported at 654 F.2d 280 (3d Cir. 1981), and the slip opinion thereof is reproduced in the Appendix to the Petition for Writ of Certiorari ("Appendix").[3]

The opinion of the District Court, which granted Hitachi's motion to dismiss for lack of personal jurisdiction and insufficiency of service of process, is reported at 491 F. Supp. 1296 (D.N.J. 1980) and the slip opinion thereof is reproduced in the Appendix.

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3. The opinion of the Court of Appeals, dated July 9, 1981, was amended by order of the Court dated August 3, 1981. Neither the slip opinion as reproduced in the Appendix nor the version presented in the advance sheets at 654 F.2d 280 contains the amendment. The second sentence under "II" of the opinion of the Court was changed by this amendment to read as follows:

> However, the principle announced in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny, which is applied in diversity cases, is also applicable to nondiversity cases.

COUNTER-STATEMENT OF THE CASE

Petitioner DeJames commenced this admiralty action in the United States District Court for the District of New Jersey against Respondent Hitachi and others to recover damages for personal injuries allegedly sustained in an accident which occurred during the course of his employment as a longshoreman aboard the M.V. "Magnificence Venture" ("ship") while the ship was moored to a pier in Camden, New Jersey.

The ship had been built by defendant Usuki Tekkosho at its shipyard in Saiki, Japan. After the ship had been in operation for several years, Respondent Hitachi, a Japanese corporation with its principal place of business in Tokyo, performed certain conversion work upon the ship at Hitachi's shipyard in Osaka, Japan. This work was performed pursuant to a contract made in Japan between Hitachi and the ship's then charterer, defendant Nippon Yusen Kaisha.

Upon completion of the conversion work, the ship left Hitachi's Osaka shipyard, and Hitachi has had no further contact or involvement with it.

At all times pertinent to this litigation, Hitachi maintained no office or place of business in the State of New Jersey. It had no agent of any type in the State of New Jersey. In addition, Hitachi was not qualified to do business, nor did it actually transact any business, in the State of New Jersey. Hitachi did not seek to avail itself of the privilege of conducting any activities in New Jersey, nor did it attempt to or in fact derive any economic benefit from New Jersey.

In short, Hitachi's only connection with the State of New Jersey was the fortuitous circumstance that a single ship, upon which it had performed conversion work in Japan but over which it exercised no control thereafter, later became the site of Petitioner's accident while moored to a pier in Camden, New Jersey.

Service of process was purportedly made upon

Hitachi pursuant to the New Jersey long-arm rule[4] and in the manner prescribed by the *Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, 20 U.S.T. 361-367 (1969).

Hitachi thereupon filed a motion to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b) for lack of personal jurisdiction and insufficiency of service of process. Petitioner was accorded full discovery on these issues. Based upon the record thus created, the three briefs submitted by Petitioner, the five briefs submitted by Hitachi and the oral argument heard on two separate occasions, the District Court dismissed the complaint against Hitachi.

The United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court. Its opinion, authored by the Honorable Chief Judge Collins J. Seitz, and its judgment were filed on July 9, 1981.

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4. Rule 4:4-4, N.J. Court Rules, 1969.

REASONS FOR DENYING THE WRIT

I. The Courts Below Gave Full Consideration to the Issues and Decided them Correctly

The Petition for Writ of Certiorari should be denied because both courts below fully considered and correctly decided the issues in question. Each court held that (1) Hitachi's contacts with the State of New Jersey were insufficient to subject it to the personal jurisdiction of the District Court for the District of New Jersey, Appendix 5A-10A, Appendix 31A-41A, and (2) under the facts of this case, Hitachi's contacts with the entire United States cannot be aggregated for purposes of personal jurisdiction analysis, Appendix 10A, 17A-18A, Appendix 42A-59A.

II. The Decision of the Court of Appeals Concerning the National Contacts Issue Is Not in Conflict with Decisions of Other Courts of Appeals

The decision of the Court of Appeals for the Third Circuit concerning the national contacts issue is not "in conflict with the decision of another federal court of appeals on the same matter." *See* Rule 17.1(a), Supreme Court Rules. In fact, the only other court of appeals which has actually decided this issue has rejected the national contacts theory. *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406 (9th Cir. 1977).

While there may be a split of authority among the district courts concerning this issue, the District Court in this case has accurately stated, Appendix 50A,

> A review of the pertinent case law reveals that the overwhelming majority of courts which have considered the national contacts approach have rejected its application in the absence of statutory authority for service of process.

See, also, Superior Coal Co. v. Ruhrkohle, A.G., 83 F.R.D. 414, 418-420 (E.D. Pa. 1979).

III. Petitioner's Arguments Concerning the National Contacts Issue Should be Directed to Congress and Not to This Court

Petitioner complains that an "anomaly" is created when the personal jurisdiction of a federal court in a federal question case is determined by the law of the forum state whose long-arm statute or rule has been utilized.

Perhaps an "anomaly" does exist. However, as stated by the Court of Appeals, Appendix 5A,

> The anomaly of a federal court being limited by the requirements of the fourteenth amendment in a nondiversity case where service must be made pursuant to a state long-arm rule could easily be rectified by congressional authorization. . . . It is not within [the Court's] province to create such authorization.

Therefore, if the Petitioner has a philosophical complaint about the *in personam* jurisdictional reach of the district courts in a federal question case, his arguments in favor of a broader reach should be addressed to Congress and not to this Court. *See, also, Wells Fargo & Co. v. Wells Fargo Exp. Co., supra; Hartley v. Sioux City and New Orleans Barge Lines, Inc.*, 379 F.2d 354, 356 n.2 (3d Cir. 1967); *Edward J. Moriarty & Co. v. General Tire & Rubber Co.*, 289 F. Supp. 381, 390 (S.D. Ohio 1967).

IV. The National Contacts Issue is Premature for Decision by This Court

The Supreme Court should not devote its time and attention to a theory for which there is no support at the appellate level and only questionable and sparse support at the district court level.

Moreover, both the Court of Appeals and the District Court in this case proceeded on the assumption that service of process by wholly federal means is a prerequi-

site to the permissible application of the national contacts theory, absent congressional authorization. Accordingly, if the national contacts issue is to be reviewed, this Court should await a case in which service of process has been made by wholly federal means.

V. The Decisions of The Court of Appeals and the District Court Regarding Hitachi's Contacts with the State of New Jersey Are Consistent with This Court's Decision in *World-Wide Volkswagen v. Woodson* and the Unbroken Line of Authority Culminating Therein

Both the Court of Appeals and the District Court fully considered and correctly followed this Court's decision in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Moreover, each argument advanced by Petitioner in the lower courts concerning the sufficiency of Hitachi's contacts with the State of New Jersey was addressed and rejected by this Court in *World-Wide Volkswagen, supra*.

In addition, the decisions of the Court of Appeals and the District Court are consistent with the unbroken line of authority represented by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), *Hanson v. Denckla*, 357 U.S. 235 (1958), *Shaffer v. Heitner*, 433 U.S. 186 (1977), and *World-Wide Volkswagen Corp. v. Woodson, supra*. Petitioner has shown no valid reason why this Court should reexamine those settled principles.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: November 4, 1981